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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 589

N. G. SEITZ AND B. S. GLADNEY,
Petitioners,

vs.

THE CHOCTAW AND CHICKASAW NATIONS AND THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

LOUIS A. FISCHL,
GEORGE N. OTEY,
T. G. JOHNSON,
R. RHYS EVANS,
Counsel for Petitioner.

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DARK PAGE BLEEDTHRU

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

The petitioners, N. G. Seitz and B. S. Gladney, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in this cause on December 18, 1951.

Opinions Below

The judgment of the District Court is set out (R. 11) and the opinion of the Court of Appeals appears (R. 14).

Jurisdiction

The judgment of the Court of Appeals was entered on December 18, 1951 (R. 21).

The jurisdiction of this court is invoked under 62 Statutes 928; U. S. C. A. 28, Sec. 1254 (1), and Supreme Court Rule 38, as amended, 1948.

Questions Presented

Whether an action can be maintained over the objection timely made that there is an indispensable party lacking where:

(a) The Choctaw and Chickasaw Nations in their own name bring an action to recover the possession of and quiet the title to alleged undisposed of tribal lands; and where

(b) The only parties to said suit are the Indian Nations and private United States citizens defendants; and where

(c) The United States is not a plaintiff and refuses its consent to be made a defendant; and where

(d) A final judgment in such action (absent the United States as a party) in favor of the defendants and against the plaintiffs will not be res adjudicata.

Statutes Involved

The principal statute involved is the Act of Congress of April 26, 1906, (34 Statutes 137) and particularly Sec. 18 thereof, printed in Appendix infra.

Statement

The Choctaw and Chickasaw Nations in their own names brought this suit against N. G. Seitz, B. S. Gladney and J. W. Gladney. J. W. Gladney died during the proceedings but he had no actual interest in the subject matter involved and was not a proper party. The suit was to recover possession of and quiet title to certain lands alleged to be unallotted tribal lands located in Love County, Oklahoma, and lying east of Red River between the west bank of Red River as located by the survey of May 27, 1925, pursuant to

the decree in *State of Oklahoma* v. *Texas,* 260 U. S. 606; 265 U. S. 500; 276 U. S. 596; 281 U. S. 109, and the meander line established by the survey of 1898. The lands are admittedly in the possession of the defendants (R. 2, 3, 4, 5 and 14).

The defendants moved to dismiss the complaint on the ground of the non-joinder of the United States as a party. The Nations then filed a motion to bring in the United States as a third party defendant. The trial court entered an order making the United States a third pary defendant. The United States moved to dismiss as to it on the ground that it had not consented to be sued in such action. The Trial Court dismissed the action as to the United States on the ground that it had not consented to be sued and sustained the motion of the defendants to dismiss the action on the ground that the United States was an indispensable party (R. 7, 8, 9, 10, 11 and 14).

The Choctaw and Chickasaw Nations appealed to the United States Court of Appeals for the Tenth Circuit, their points for reversal being that the United States was not an indispensable party but if it was an indispensable party the United States had been brought in under the applicable rules of Federal procedure, namely, 4 (d) (4) and the judgment would be binding on it (R. 1).

That Court of Appeals rendered its judgment reversing the cause and remanding the same for further proceedings in accordance with the views expressed in its opinion (R. 14). It determined that a judgment rendered in this case in favor of the defendants and against the Nations would not be binding upon the United States and that the titles of the defendants would continue to be clouded until the United States saw fit to commence and prosecute to final judgment an action to establish the title of the Nations to such lands but that nevertheless the equities presented by the situation required that the Nations be permitted to prosecute the action without the presence of the United

States even though a judgment against them would lack finality (R. 14-21).

Specification of Errors

The court of appeals erred:

In holding that this cause should proceed to trial on the merits while likewise holding that a judgment rendered on the merits against the plaintiffs would not be determinative of the controversy.

Reasons for Granting the Writ

(1) The Court of Appeals for the Tenth Circuit has decided an important question of Federal law, which has not been but should be settled by this court.

In amplification of the above proposition, attention is directed to the following pertinent matters:

(a) Recognized as a matter of almost universal knowledge, in Oklahoma at least, is the fact that the Choctaw and Chickasaw Nations are the claimants of numerous lands, or interests in lands, in Oklahoma which it is claimed by the Nations that they have the right to recover, based on reversionary interests in connection with condemnation proceedings, right-of-way grants, exceptions in patents, riparian rights and other matters. For instance, followed to its ultimate conclusion, the litigation in this case which seeks to establish the title and recover the possession to lands which it is alleged are unallotted and adjacent to Red River, or formerly in Red River, will involve, in its final analysis, the determination of the title to all the Red River riparian lands from the 98th Meridian east to the Arkansas River, a distance of many, many miles. The determination of this question so as to be conclusive on all interested parties should be a condition precedent to the maintaining of any lawsuit for the recovery and possession of individual tracts and subject to this same situation.

(b) While this court has considered cases involving the right of Indian Tribes to maintain suits in their own names where the United States was not a party, the question as here raised is one of first impression where the objection of the lack of an indispensable party, the United States, in a suit brought by the Choctaw and Chickasaw Tribes of Indians to cover alleged tribal lands was raised and objected to at the inception of the litigation and in accordance with the provisions of Rule 12 (b) (7).

(c) When, as here, the Court of Appeals has determined that under the Federal laws and decisions, in a suit brought by Tribal Indians in their tribal capacity against private citizens of the United States to recover alleged tribal land and where the point is urged at the inception of the litigation that the United States is an indispensable party, and where the Court of Appeals, while determining that the action so brought by the plaintiffs if adverse to the plaintiffs would not be binding upon the plaintiffs' asserted claims and yet requires the defendants to continue with such litigation and where this court has not passed upon such question, the determination of such question by this court is a matter of vital public importance and the decision of the lower court under such circumstances should be by this court reviewed.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Louis A. Fischl,
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Ardmore, Oklahoma,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Statement

It was the contention of the Indian Nations, in the Lower Court, that this suit, if prosecuted to a trial on the merits, would be binding upon the plaintiffs and the United States to the extent that it had authority to institute or maintain such an action for the Indian Tribes even though the United States was not a party. It was further by the Nations contended that after the United States had been made a party and the cause had been dismissed on the United States' motions, that the judgment in this case would nevertheless be binding upon the United States.

The defendants have never had but one position with respect to their insistence that the United States should be a party to this suit, it being their position that when this case has been disposed of on the merits that if the judgment is in their favor it should be final upon all parties.

In the various opinions rendered by this court in *State of Oklahoma* v. *Texas, supra,* 260 U. S. 606; 265 U. S. 500; 276 U. S. 596; 281 U. S. 109, and the other decisions rendered in that litigation, it was determined that the entire bed of Red River as it was contiguous to the Choctaw and Chickasaw Nations territory, was located in Oklahoma but those cases did not decide whether title to the entire bed of Red River passed to the Choctaw Nation from the United States or whether the title to a part of the bed thereof remained in the United States and now belongs to the United States. A complete determination of this action would require a determination of that question.

To the extent that title passed to the Choctaw and Chickasaw Nations, there then is further involved here the question as to whether or not that title passed to allottees or

purchasers of or from the Choctaw and Chickasaw Nations to whom were patented the lands bounded by the River. A determination of the instant case involves the determination of that question.

The Secretary of the Interior is specifically authorized to maintain an action for the tribes of the character here involved and such a suit would undoubtedly be binding. But this action has not been so brought. Sec. 18 Act 1906 (See Appendix).

It was the contention of petitioners in the court below that this cause should not be forced to a trial on the merits unless the result of such a trial would be determinative upon all issues involved.

The Court of Appeals, in rendering its decision herein, determined that this cause must proceed on the merits. However, that court likewise determined that a judgment in the case on the merits, if in favor of petitioners, would not be final on all issues. The judgment would not be binding upon the United States, who could bring a suit notwithstanding that judgment covering the same subject matter on behalf of the Indian Nations. That court stated that the defendants should: "run the risk of the burden and expense of defending two lawsuits even though they succeeded in obtaining a judgment in their favor" in the instant action (R. 20).

In view of the determination by the Court of Appeals, as above indicated, and in view of the fact that the question here presented is one of far-reaching public importance and of vital interest to many citizens of the United States which should be decided by this court and in view of the fact that the question here presented appears to be one of first impression in this court, it is our contention that this court should assume jurisdiction and determine that a final judgment on the merits herein will be: (a) either binding on all

the parties hereto, including the United States; or (b) that this action cannot be further maintained and prosecuted by the Choctaw and Chickasaw Nations alone in the manner in which it is now brought.

Argument and Authorities

Unless the United States Is Bound by the Final Decree Rendered Herein on the Merits, this Suit Cannot Be Maintained.

Section 18 of the Act of Congress of April 26, 1906, 34 Stat. 137, specifically provides that the Secretary of the Interior is authorized to bring a suit of the character here involved in the name of the United States for the use of the Choctaw, Chickasaw, Cherokee, Creek or Seminole Tribes, respectively (See Appendix).

The status of the Choctaw and Chickasaw Nations is not that of independent states or sovereign nations but the relationship is that between a superior and an inferior, whereby the latter is placed under the care and control of the former. *Choctaw Nation* v. *U. S.*, 119 U. S. 1, 27-28.

The property and affairs of the tribe is subject to the control and management of the Government. *U. S.* v. *Creek Nation*, 296 U. S. 103, 109.

A judgment rendered in a suit brought by the United States without the presence of the Indian Tribes is binding upon such Indian Tribes. *Heckman* v. *United States*, 224 U. S. 413. In the case of *United States* v. *Candelaria*, 271 U. S. 432, an action was brought by the United States to quiet title to certain lands in a certain Pueblo Indian Tribe. The defendants set up in bar two decrees rendered in prior suits against the Pueblos to quiet title to the same land. In both suits decrees were entered for the defendants on the merits. In reply the United States alleged that it was not a party to either of the suits and was not bound by the decrees.

This court held that in the absence of the United States as a party to the prior suits, the judgments therein did not bar the United States from maintaining the action on behalf of the Pueblo Indians. Also see *Pruett* v. *United States,* 256 U. S. 201; *Sunderland* v. *United States,* 266 U. S. 226; *U. S.* v. *Hellard,* 322 U. S. 363.

In the early case of *Shields* v. *Barrow,* 58 U. S. 130, this court held that indispensable parties were:

> "Persons who not only have an interest in the controversy but an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience."

The opinions by this court referred to in *State of Oklahoma* v. *Texas, supra,* did not determine whether title to the entire bed of Red River passed to the Choctaw Nation or whether title to a part of the bed thereof remained in the United States and now belongs to the United States. It did determine in those cases that the center of the bed of Red River to the Texas line in places west of the Choctaw and Chickasaw Nations' boundary lines on the river did belong to the United States.

The United States has possibly a proprietary interest in a portion of the land, the title to which is in this action involved. It is possible that such an interest would be adverse to the Choctaw and Chickasaw Nations.

Does not equity and justice and the rights of all interested parties impel that on the record here presented that before the title to the land here involved be litigated on its merits that all parties having or claiming an interest therein in any manner, to-wit, the Choctaw and Chickasaw Nations, the United States and the citizen defendants against whom recovery is sought, should be parties to the action?

Conclusion

The importance of the question here presented should not be minimized. The records of this court in the Oklahoma-Texas litigation above referred to will furnish an idea of the extent of the territory involved along or in Red River that is subject to litigation of the character here involved. This is only one phase of the situation. Countless right-of-ways and other tracts and parcels of land are involved. The determination by this court in a manner contended for by petitioners will at least prevent many lawsuits.

The assumption, we submit, is warranted that when Congress passed the act, a portion of which is set out in the Appendix, giving the Secretary of the Interior the right and authority to bring suits of the character here involved on behalf of the Indian Tribes in the name of the United States, that Congress, by this specific law, intended that its guardianship over these Indian Tribes should be protected and administered and exercised by the Secretary. It might be that this suit, and other suits of this character, insofar as the Secretary of the Interior and his advisers are concerned, are groundless. If they are groundless, then they surely should not be brought; if they are not groundless, and if the Secretary of the Interior refuses to bring them, surely the remedy is not for the courts to permit the litigating of lawsuits and issues with a possibility and assurance that if persons involved, such as petitioner are involved, should win their lawsuits the decisions therein would not be determinative and conclusive, as is set out in the following excerpt from the opinion of the Circuit Court of Appeals:

> "So it comes down to this: if we hold that the United States is an indispensable party, the Nations will be unable to assert their longstanding claim to the land; and if we hold that the United States is not an indispensable party, the defendants will run the risk of the

burden and expense of defending two lawsuits, even though they succeed in obtaining a judgment in their favor in the instant action.

We are of the opinion that the equities presented by the situation and the inconveniences that will result to the Nations, if they are denied the right to prosecute an action, and to the defendant, if the Nations are permitted to prosecute the action without the joinder of the United States, weigh heavily in favor of the Nations." (R. 20)

All the facts and circumstances here, we submit, indicate that within the purview of the decisions of this court, as found by the trial court, the United States is an indispensable party hereto and that equitable considerations and principles require that these defendants, and the many other citizens who may be similarly situated, be not compelled to engage in expensive and unwarranted litigation over the subject matter hereof in the absence of final authority from this court that any judgment secured in their favor will be binding both upon the Indian Tribes and upon the United States.

Where, as here, the Congress of the United States has passed an act specifically authorizing the bringing of suits of this character in the name of the United States by the Secretary of the Interior and where, likewise, the United States occupies a relationship to the Indian Tribes which requires its presence in any lawsuit that might effectively determine an outstanding title against them, in a suit brought to establish their alleged claims to alleged Tribal Lands and where, as here, the record shows a direct refusal of consent on the part of the United States to be a party to this case and where the defendants, as before indicated, if they should win this case in the court below, would have no final judgment quieting their title to the lands involved, we submit, that the conclusion of the Court of Appeals that the

equities in this case weigh heavily in favor of the Tribes being permitted to prosecute an action which, if they lost, would not be final, is not well taken and that its judgment in this case should be reviewed.

Respectfully submitted,

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DARK PAGE BLEE

APPENDIX

SECTION 18, ACT OF CONGRESS OF APRIL 26, 1906, 34 STAT. 137, 144

That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, either before or after the dissolution of the tribal governments, for the collection of any moneys or recovery of any land claimed by any of said tribes, whether such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits; Provided, that proceedings to which any of said tribes is a party pending before any court or tribunal at the date of dissolution of the tribal governments shall not be thereby abated or in anywise affected, but shall proceed to final disposition.

Where suit is now pending, or may hereafter be filed in any United States court in the Indian Territory, by or on behalf of any one or more of the Five Civilized Tribes to recover moneys claimed to be due and owing to such tribe, the party defendants to such suit shall have the right to set up and have adjudicated any claim it may have against such tribe; and any balance that may be found due by any tribe or tribes shall be paid by the Treasurer of the United States out of any funds of such tribe or tribes upon the filing of the decree of the court with him.

DTHRU

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 589

N. G. SEITZ AND B. S. GLADNEY, *Petitioners*

v.

THE CHOCTAW AND CHICKASAW NATIONS AND THE UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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MEMORANDUM FOR THE UNITED STATES

Both the district court and the court of appeals have held that, since the United States had not consented to be sued in the instant case, the complaint should be dismissed as to the United States (R. 11, 15). No question is here presented as to that ruling. Petitioners contend only that the United States was an indispensable party to the

quiet title action, so that a trial on the merits should not be permitted to proceed in the Government's absence (see Pet. 2, 4, 9-12). Although not directly affected by this contention, the Government believes that, for the reasons outlined in the opinion of the court of appeals (R. 16-21), it is not an indispensable party to the proceeding and that the Indian tribes are entitled to an adjudication of their claims on the merits.

Respectfully submitted,

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Solicitor General.

MARCH, 1952.

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